

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MARK HALE, TODD SHADLE, and )  
LAURIE LOGER, on behalf of themselves and )  
all others similarly situated, )

Plaintiffs, )

v. )

Case No. 12-cv-00660 DRH-SCW

STATE FARM MUTUAL AUTOMOBILE )  
INSURANCE COMPANY, EDWARD )  
MURNANE, and WILLIAM G. SHEPHERD, )

Defendants. )

**PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE  
AGAINST OBJECTOR LISA MARLOW**

Plaintiffs move for entry of an order directing objector Lisa A. Marlow to show cause, if she can, why she should not be held in contempt for failing to comply with this Court's Order Granting Preliminary Settlement Approval ("Preliminary Approval Order") requiring her to testify at a deposition. Marlow has filed an appearance and an objection in this case, and her lawyer has been granted leave to appear pro hac vice. Marlow has submitted herself to the jurisdiction of this Court and is bound by its orders. In support of this motion, Plaintiffs respectfully state:

1. On September 4, 2018, the Court entered the Preliminary Approval Order, granting preliminary approval of the Settlement Agreement in this case. [942]. There, this Court set a final fairness and approval hearing for December 13, 2018. *Id.* at ¶ 8. Plaintiffs filed a petition for attorney fees, costs, and expenses, and a motion for final approval of the Settlement on October 16, 2018, as directed in the Preliminary Approval Order. *Id.* at ¶ 18. This Court ordered class members wishing to file objections to the settlement to do so before November 17,

2018, and granted Plaintiffs and Defendants “the right to depose any objector to assess whether the objector has standing or motives that are inconsistent with the interests of the Class.” *Id.* at ¶¶ 11, 18. The Court set a December 6, 2018 deadline for responses to any objections. *Id.* at ¶ 18.

2. On November 13, 2018, Marlow’s lawyer, Mark J. Downton, moved to appear for Marlow pro hac vice. [957]. This Court granted the motion the next day. [958]. On November 17, 2018, Marlow filed her objection, the only objection to the proposed Settlement. [961].

3. On November 18, 2018, Plaintiffs informed Mr. Downton that they wanted to depose Marlow in the Orlando area on November 27, 2018. (Ex. 1, e-mail of November 18, 2018, 11:38 a.m., from S. Blonder to M. Downton). Mr. Downton would not confirm that he would produce Marlow for deposition on November 27, 2018. (Ex. 1, email of November 18, 2018, 10:43 a.m., from M. Downton to S. Blonder). Downton wrote that he was out of the office through the Thanksgiving weekend, and the following week he was booked with a trial and the closing of his house. *Id.* Downton further wrote that “[a]s to any potential discovery, as noted, the Court has limited the scope of your examination as to whether she is a class member and her motives for objecting. Neither of these inquiries requires a deposition, in Florida or elsewhere. Please advise of any topics you have particular interest in and I will informally provide you information on those topics to the extent possible and reasonable.” *Id.*

4. On November 20, 2018, Plaintiffs issued a notice of deposition for Marlow, to take place on November 27, 2018, at 9:00 a.m. at a location in Orlando, Florida, less than 50 miles from her residence. (Ex. 2.)

5. Further emails were exchanged between Plaintiffs’ counsel, Robert A. Clifford, and Mr. Downton. (Ex. 3.) Mr. Downton asked that Plaintiffs withdraw the notice for the November 27 deposition and Mr. Clifford did so.

6. On November 23, 2018, Plaintiffs issued and served Marlow with a valid subpoena (“Subpoena”) for her deposition in Orlando, Florida on December 5, 2018. The Subpoena issued from the Southern District of Illinois, as Fed. R. Civ. P. 45(a)(2) requires. (Ex. 4.) The Subpoena set Marlow’s deposition for December 5, 2018, prior to the due date for Plaintiffs’ response to Marlow’s objection.

7. On December 3, 2018, after the close of business, Mr. Downton wrote Mr. Clifford that he had filed a Motion to Quash the Subpoena (“Motion to Quash”) in the United States District Court for the Middle District of Florida and emailed the purported motion to Mr. Clifford. (Grp. Ex. 5, e-mail string between M. Downton and R. Clifford, Dec. 3-4, 2018, including the Motion to Quash e-mailed from M. Downton to R. Clifford.) The purported motion was unsigned, bore no court-filing stamps, and did not include any of the five exhibits referenced in the Motion to Quash. *Id.*

8. On December 4, 2018, around 10:15 a.m., Mr. Clifford received, via FedEx, a signed hardcopy version of the Motion to Quash, with exhibits but without court-filing stamps.

9. In the Motion to Quash, Marlow alleges in a declaration that in her claim form in this case, she “mistakenly” indicated that she did not have non-OEM crash parts installed in her car. That representation, which was made under penalty of perjury, would exclude her from the class. *See* [942] at ¶ 5.

10. On December 4, 2018, in an email to Mr. Clifford sent at 9:41 a.m., Mr. Downton confirmed that neither he nor Marlow would appear at the December 5, 2018 deposition. (Ex. 6.)

11. On December 4, 2018, at 2:30 p.m. CST, one of Plaintiffs’ attorneys of record, Kristofer S. Riddle, called the Clerk of the United States District Court for the Middle District of Florida and was told that as of then, Marlow’s Motion to Quash was not on file.

12. Marlow has appeared in this case, she has filed an objection to the proposed settlement under the Preliminary Approval Order, and she is requesting relief from this Court. The Preliminary Approval Order entitles Plaintiffs and Defendants to depose her. She refuses to be deposed.

WHEREFORE, Plaintiffs request that the Court enter an order requiring Marlow to show cause, if she can, why she should not be held in contempt of court for her failure to comply with Preliminary Approval Order and the associated Subpoena.

Dated: December 4, 2018

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**CERTIFICATE OF SERVICE**

Pursuant to Local Rule 7.1(b), I certify that a copy of the foregoing was served upon counsel on via the Court's CM/ECF system on December 4, 2018.

/s/ Robert A. Clifford